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No. 94

In the Supreme Court of the United States

OCTOBER TERM, 1957

FRANK BONETTI, PETITIONER

v.

WILLIAM P. ROGERS, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT

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OPINION BELOW

The opinion of the Court of Appeals (R. 36–38) is reported at 240 F. 2d 624.

JURISDICTION

The judgment of the Court of Appeals was entered on December 27, 1956 (R. 39). The petition for a writ of certiorari was filed on March 25, 1957, and granted on December 16, 1957 (355 U. S. 901). The jurisdiction of this Court rests on 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether petitioner was properly ordered deported under the immigration statute providing for deporta-

tion of an alien "who was at the time of entering the United States, or has been at any time thereafter" a member of the Communist Party, where it appears that he was a member of the Communist Party after his original entry, but not after his last readmission for permanent residence (which took place following a departure from the country).

STATUTE INVOLVED

As amended by Section 22 of the Internal Security Act of 1950 (64 Stat. 1006), the Act of October 16, 1918 (40 Stat. 1012) provided, at the time here relevant, as follows:[1]

* * * * *

> Any alien who is a member of any one of the following classes shall be excluded from admission into the United States:
>
> * * * * *
>
> (2) Aliens who, at any time, shall be or shall have been members of any of the following classes:
>
> * * * * *
>
> (C) Aliens who are members of or affiliated with (i) the Communist Party of the United States, * * *.

* * * * *

Section 4 (a) of Section 22 of the 1950 Act provided:

---

[1] These provisions, although technically repealed by Section 403 (a) (16) of the Immigration and Nationality Act of June 27, 1952 (66 Stat. 163, 279), were recodified and reenacted by the 1952 Act without material change. See *id.*, Section 241 (a) (6) (C), 66 Stat. 204, 8 U. S. C. 1251 (a) (6) (C).

> Any alien who was at the time of entering the United States, or has been at any time thereafter * * * a member of any one of the classes of aliens enumerated in section 1 (2) of this Act, shall, upon the warrant of the Attorney General, be taken into custody and deported in the manner provided in the Immigration Act of February 5, 1917. The provisions of this section shall be applicable to the classes of aliens mentioned in this Act, irrespective of the time of their entry into the United States.

STATEMENT

Petitioner seeks review of the judgment of the Court of Appeals for the District of Columbia Circuit (R. 39) affirming the District Court's decision (R. 7–10) sustaining an order of deportation against petitioner. The pertinent findings of fact, here undisputed, may be summarized as follows:

Petitioner is an alien who initially entered the United States for permanent residence in 1923. He was a member of the Communist Party in this country from 1932–1936 (R. 7–8).[2] During that period he distributed party literature (R. 24, 27), paid dues (R. 22), solicited membership for the party (R. 26), and was at various times organizer, secretary and director of a unit consisting of 12 to 15 members (R. 26, 34).

Petitioner departed from the United States in 1937 and fought in the Spanish Civil War from July 1937 to July 1938 (R. 24–25, 33–34). In 1938, he reapplied for admission to the United States as an

[2] The Immigration and Naturalization Service found petitioner's membership to be for the years 1932–1936 (R. 13, 15);

immigrant, having previously abandoned any rights acquired as the result of his 1923 admission (R. 8).

At a hearing before a special board of inquiry, petitioner disclosed his former membership in the Communist Party (R. 33–35). He was at first excluded by the board, but later admitted as a quota immigrant (R. 12).[3] After his 1938 entry, petitioner made one further departure and reentry, in 1939 (R. 13).[4]

In 1952, petitioner was charged with being deportable as one who had been, after entry, a member of the Communist Party. At the deportation hearing, the Government offered the following proofs: petitioner's statements at his hearing on the 1938 application for admission (R. 33–35); petitioner's alien registration form, in which he admitted membership in the Communist Party from 1932 to 1936 (R. 11); and petitioner's testimony in his application for naturalization in 1943, in which he disclosed his membership and past activities in the Communist Party (R. 19–30). Petitioner did not testify (R. 17). He was found deportable on the charge made (R. 10–14), and the Board of Immigration Appeals sustained the order (R. 14–15).

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one of petitioner's own statements extends the period into 1937 (R. 18, 35).

[3] The statutory provision for exclusion solely by reason of membership in the Communist Party had not been enacted in 1938. This provision was first enacted in the Internal Security Act of 1950 (64 Stat. 1006).

[4] The occasion, it appears, was a brief trip to Mexico (R. 30–31).

SUMMARY OF ARGUMENT

The question presented by this case is whether petitioner's Communist Party membership from 1932–1936, following his original entry into the United States in 1923, subjects him to deportation under Section 22 of the Internal Security Act of 1950, irrespective of the absence of proof of membership in the Communist Party following his re-entries in 1938 and 1939. We submit that membership in the Communist Party following *any* entry into the United States is ground for deportation under the 1950 Act.

A. "ANY COMING OF AN ALIEN FROM A FOREIGN COUNTRY TO THE UNITED STATES" CONSTITUTES AN ENTRY UNDER THE IMMIGRATION LAWS

1. Petitioner would have the plain language of Section 22 of the Internal Security Act of 1950, providing for the deportation of aliens who were Communist Party members "at the time of entering the United States or * * * at any time thereafter" (see *supra*, p. 3), interpreted as if it read "after *last* entering the United States." The rationale of prior decisions of this Court construing the word "entry," as used in the immigration laws, disposes of such a construction.

United States ex rel. Volpe v. *Smith*, 289 U. S. 422, involved an alien who had first entered this country in 1906. In 1925 he was convicted of a crime involving moral turpitude (counterfeiting). He left the country in 1928 for a visit to Cuba and returned shortly thereafter. In 1930, he was held deportable under Section 19 of the Immigration Act of 1917

as an alien convicted of a crime involving moral turpitude "prior to entry." In this Court, *Volpe* contended that "prior to entry" should be construed as "prior to the first entry". The Court rejected this contention, holding (289 U. S. at 425) that "the word 'entry' * * * includes *any* coming of an alien from a foreign country into the United States whether such coming be the first or *any* subsequent one." (Emphasis added.) To the same effect, see *United States ex rel. Claussen* v. *Day*, 279 U. S. 398.

The Court's rejection, in *Volpe* and *Claussen*, of the then attempt to modify "entry" by adding the word "first" similarly requires rejection of the present effort to confine this statutory term—again used in unqualified form—to the *last* entry.

2. Although its provisions are not directly involved in the instant proceedings, it is significant that the Immigration and Nationality Act of 1952 defines entry, in complete accord with the principles announced in the *Volpe* case, as "any coming of an alien into the United States, from a foreign port or place * * *." Section 101 (a) (13). In view of this explicit definition, there is no substance to petitioner's contention that the use of the words "any entry" in Section 241 (a) (13) of the 1952 Act—which renders deportable aliens abetting (for gain) illegal entry of others "prior to, or at the time of *any* entry, or at any time within five years after *any* entry" (emphasis added)—indicates that the phrase "after entry," when unaccompanied by the word "any," refers only to the last entry. It appears, moreover, that the primary purpose of the quoted language in Section 241 (a)

(13) was to assure deportation of the described "aiders" regardless of when they carried on their unlawful activities—before, after, or at the time of any entry of theirs.

B. THE ESSENTIAL PURPOSE OF SECTION 22 OF THE INTERNAL SECURITY ACT WAS TO EXPEL ALIENS WHO, LIKE PETITIONER, HAVE BEEN MEMBERS OF THE COMMUNIST PARTY WHILE RESIDENTS OF THIS COUNTRY

Section 23 (a) of the Alien Registration Act of 1940, 54 Stat. 673, was expressly adopted to overcome this Court's decision in *Kessler* v. *Strecker,* 307 U. S. 22, holding that past membership of an alien in a proscribed organization was not a ground for deportation under the 1918 Act. The philosophy of the provision, as explained by its sponsors, was that this country would best be served by replacing those aliens who had fallen prey to Communism in this country with those aliens seeking entry who were free of any such taint.

Section 22 of the Internal Security Act of 1950 carried this approach a step further by making proof of membership in the Communist Party, *per se,* a ground for deportation. The purpose was to "strengthen the provisions of existing law with respect to the exclusion and deportation of subversive aliens." S. Rep. No. 2230, 81st Cong., 2d Sess., p. 5. Having determined that the strength of the Communist Party in this country was concentrated in its alien membership, Congress deliberately aimed to expel any alien who had knowingly been a member of the Communist movement at any time during the period of his residence in this country.

Petitioner's 1938 entry, though it was under a new quota unrelated to his original entry, did not remove him from the reach of the 1950 Act. His readmission in 1938 (at which time he was not excludable merely for past membership in the Communist Party) was no commitment that his past history could never be made the basis for deportation under a later statute. *Galvan* v. *Press*, 347 U. S. 522. Had petitioner never left the country, he would have become deportable. Neither the language nor the logic of the statute justifies the conclusion that he acquired immunity because he left and returned.

ARGUMENT

PETITIONER WAS PROPERLY ORDERED DEPORTED AS AN ALIEN WHO HAD BEEN, AFTER ENTRY, A MEMBER OF THE COMMUNIST PARTY

Petitioner was ordered deported under the Internal Security Act of 1950 as an alien who "at the time of entering the United States, or * * * at any time thereafter" was a member of the Communist Party.[5] The issue is whether his admitted membership in 1932–1936, subsequent to his original entry into this country in 1923, rendered him deportable under that Act even though there is no evidence of Communist Party membership following his subsequent readmis-

[5] Section 22 of the Internal Security Act of 1950, 64 Stat. 987, 1006, was repealed by Section 403 (a) (16) of the Immigration and Nationality Act of June 27, 1952 (66 Stat. 163, 279), which recodified and reenacted its provisions without material change. See Section 241 (a) (6) (C), 66 Stat. 204, 8 U. S. C. 1251 (a) (6) (C). The 1950 Act applies to this case under the savings clause of the 1952 Act (Section 405 (a)) since the order of deportation was issued prior to the effective date of the 1952 Act.

sions in 1938 and 1939. The critical issue is thus a very limited one relating only to the construction of the word "entry" as it is used in the immigration laws. It is the Government's position that, having been a member of the Communist Party after his entry in 1923, petitioner falls explicitly within the class of aliens made deportable under that provision, irrespective of the absence of proof of such membership following subsequent re-entries. In our view, membership in the Communist Party following *any* entry into the United States is ground for deportation under the 1950 Act whether such entry be the first or last coming of the alien to this country.[6] We rely upon this Court's construction of the word "entry" in analogous situations and the Congressional purpose, expressed in Section 22 of the Internal Security Act of 1950, to deport aliens who, for any length of time, were members of the Communist Party while residents of this country.

A. "ANY COMING OF AN ALIEN FROM A FOREIGN COUNTRY TO THE UNITED STATES" CONSTITUTES AN ENTRY UNDER THE IMMIGRATION LAWS

1. Although Section 22 of the Internal Security Act of 1950 provides in plain words for deportation in the case of aliens who were Communist Party members "at the time of entering the United

[6] We do not rely on the rationale of the Court of Appeals for the District of Columbia Circuit in *Klig* v. *Brownell*, 244 F. 2d 742, certiorari granted, 355 U. S. 809 (rendered moot by withdrawal of the outstanding order of deportation), to the effect that one who was a member of a Communist Party *prior* to a last entry before 1950 was deportable under the 1950 Act.

States or * * * at any time thereafter" (see *supra*, p. 3), petitioner would have it apply as if it read "after *last* entering the United States". Variants of this contention have been before this Court on previous occasions and uniformly rejected. These prior decisions answer petitioner's argument here.

In *United States ex rel. Volpe* v. *Smith*, 289 U. S. 422, the alien had originally entered the United States in 1906. In 1925, he was convicted of a crime involving moral turpitude (counterfeiting) and imprisoned. In 1928, he left the country for a visit to Cuba and returned shortly thereafter. In 1930, deportation proceedings were instituted against him under Section 19 of the Immigration Act of 1917, 39 Stat. 874, 889, which provided in pertinent part that "any alien who was convicted * * * *prior to entry*, of a felony * * * involving moral turpitude * * * shall * * * be * * * deported" (emphasis added). Having committed the offense more than five years after his original entry into the United States[7] but before a later reentry, Volpe argued that he was not subject to deportation. He contended that the words "prior to entry" in Section 19 meant "prior to the *first* entry", just as petitioner here makes the converse argument that the words "entering the United States" be modified to read "after *last* entering the United States".

The issue thus posed in the *Volpe* case had previously resulted in conflicting decisions in the Courts of Appeals. Some had reasoned that "the deportation

[7] This circumstance foreclosed deportation proceedings geared to his original entry.

which follows conviction or admission of a crime committed before entry refers to a conviction (if not also to a crime) occurring outside of this country", and that a crime involving moral turpitude committed in the United States could not be treated as a crime "prior to entry" constituting grounds for deportation under the 1917 Act. *Browne* v. *Zurbrick,* 45 F. 2d 931, 933 (C. A. 6); *Wong Yow* v. *Weedin,* 33 F. 2d 377, 379 (C. A. 9); *Wilson* v. *Carr,* 41 F. 2d 704, 707 (C. A. 9). In the *Carr* case, the Ninth Circuit said that "it seems shocking that an alien should be deported for a crime committed in this country, at any time during his natural life, simply because years later he crossed the international boundary line for some temporary purpose. We do not think that Congress so intended".

Other cases, however, had held that the "prior-to-entry" provision of the 1917 Act should be applied with equal force whether the alien committed the offense here or abroad. *United States ex rel. Medich* v. *Burmaster,* 24 F. 2d 57 (C. A. 8); *Bendel* v. *Nagle,* 17 F. 2d 719, 720 (C. A. 9); *Weedin* v. *Tayokichi Yamada,* 4 F. 2d 455 (C. A. 9); *Gomes* v. *Tillinghast,* 37 F. 2d 935, 936 (D. Mass.). The Seventh Circuit, in the *Volpe* case, had followed this latter view, pointing out that (62 F. 2d 808, 811):

> If there be any basis for distinguishing between offenses committed abroad and those committed in the United States, *it would seem that Congress might well have viewed the latter as the more reprehensible. For naturally, counterfeiting by the alien abroad, while conduct over which Congress would hardly be enthusi-*

> *astic, would be less irksome, less provocative of action by Congress than indulging in a similar pastime in the United States.* [Emphasis added.]

This Court, in *Volpe*, resolved the conflict by rejecting any attempted departure from the clear and unqualified meaning of the word "entry", saying (289 U. S. at 425):

> We accept the view that the word "entry" * * * includes *any* coming of an alien from a foreign country into the United States whether such coming be the first or any subsequent one. * * * [Emphasis added.][8]

This ruling was made despite the fact that such a construction—as noted by the lower courts taking the contrary position—would mean that, while an alien who had never left this country could not be deported for a crime involving moral turpitude for which he was convicted more than five years after entry, he would subject himself to deportation by a departure and reentry. See *Wilson* v. *Carr, supra.* The Court pointedly observed (289 U. S. at 425–426):

> Aliens who have committed crimes while permitted to remain here may be decidedly more objectionable than persons who have transgressed laws of another country.
>
> It may be true that if Volpe had remained within the United States, he could not have been expelled because of his conviction of crime

[8] This definition of entry must be read in conjunction with this Court's later opinion in *Delgadillo* v. *Carmichael*, 332 U. S. 388, holding that departure to a foreign country must be voluntary before a return to this country can be said to constitute an entry. No such issue is involved here.

> in 1925, more than five years after his original entry; but it does not follow that after he voluntarily departed he had the right of reentry. In sufficiently plain language Congress has declared to the contrary.

As a contemporary law journal viewed the decision, "the Supreme Court ha[d] at least made the law conform to the preponderant Congressional and lay thought of the day." Note, 28 Ill. L. Rev. 425, 427–428.[9]

In *United States ex rel. Claussen* v. *Day*, 279 U. S. 398, this Court had before it a case in which an alien had originally entered the United States in 1912 and last reentered from a foreign port in 1918. In 1921, he entered a plea of guilty to manslaughter committed in the United States and was sentenced to imprisonment for more than one year. "The question for decision", the Court said (p. 400), was "whether petitioner was sentenced within five years after his entry into the United States." The thrust of the petitioner's argument was that the word "entry" should be read as meaning "*first* entry" under the Act. The Court disagreed, stating that "in order

[9] The Courts of Appeals have uniformly recognized the continuing vitality of the *Volpe* rationale. See, *e. g.*, *Resurreccion-Talavera* v. *Barber*, 231 F. 2d 524, 525–526 (C. A. 9); *United States ex rel. Circella* v. *Sahli*, 216 F. 2d 33 (C. A. 7) (alien reentered after one days absence), certiorari denied, 348 U. S. 964; *Schoeps* v. *Carmichael*, 177 F. 2d 391 (C. A. 9), certiorari denied, 339 U. S. 914; *United States ex rel. Santarelli* v. *Hughes*, 116 F. 2d 613, 615–616 (C. A. 3); *Rasmussen* v. *Robinson*, 163 F. 2d 732 (C. A. 3); *United States ex rel. Doukas* v. *Wiley*, 160 F. 2d 92, 95 (C. A. 7); cf. *United States ex rel. Brancato* v. *Lehmann*, 239 F. 2d 663, 665 (C. A. 6).

that there be an entry within the meaning of the Act there must be an arrival from some foreign port or place [and] * * * when [petitioner] landed at Boston on his return from South America and Cuban ports, he made an entry into the United States within the meaning of the Act" [10] (279 U. S. at 401). It concluded that he was deportable, under Section 19 of the 1917 Act, for conviction of a crime involving moral turpitude occurring within five years of such entry. See, also, *United States ex rel. Stapf* v. *Corsi*, 287 U. S. 129, 132; *Lewis* v. *Frick*, 233 U. S. 291, 297.

Thus, in both the *Volpe* and *Claussen* cases, this Court rejected the attempt to add the word "first" before the word "entry", as the latter term is used in Section 19 of the Immigration Act of 1917. The Court, no less, should reject the present effort to add the word "last" to a statute which also uses "entry" in its unqualified form.

2. Although the Immigration and Nationality Act of 1952 is not directly involved in the present proceedings, it is significant that the definition of "entry" in that act is in complete accord with the principles enunciated by this Court in *Volpe*. Section 101 (a) (13) of the 1952 Act defines entry, so far as here

[10] The *Claussen* analysis of "entry" has been followed by the lower courts in cases where the crime was committed in the United States within five years after a reentry, but more than five years after original entry, even where the absence from the United States was a matter of hours or days. See *e. g.*, *Jackson* v. *Zurbrick*, 59 F. 2d 937 (C. A. 6); *Guarneri* v. *Kessler*, 98 F. 2d 580 (C. A. 5); cf. *Zurbrick* v. *Woodhead*, 90 F. 2d 991, 992 (C. A. 6); *Ex parte Marinaro*, 2 F. Supp. 117, 118 (W. D. N. Y.); *United States ex rel. Siegel* v. *Reimer*, 23 F. Supp. 643, 644 (S. D. N. Y.), affirmed, 97 F. 2d 1020 (C. A. 2).

material, to mean "any coming of an alien into the United States, from a foreign port or place".

The reports on the Act point out (H. Rep. No. 1365, 82d Cong., 2d Sess., p. 32; S. Rep. No. 1137, 82d Cong., 2d Sess., p. 4):

> The bill defines the term "entry" as precisely as practicable, giving due recognition to the judicial precedents. Thus *any coming of an alien from a foreign port or place or an outlying possession into the United States is to be considered an entry,* whether voluntary or otherwise, unless the Attorney General is satisfied that the departure of the alien, other than a deportee, from this country was unintentional or was not voluntary. [Emphasis added.]

Petitioner's attempt to rely upon the 1952 Act to support his definition of entry as meaning exclusively the last entry is thus misplaced. He points to Section 241 (a) (13) of the 1952 Act which provides for the deportation of aliens abetting (for gain) illegal entry of others "prior to, or at the time of *any* entry, or at any time within five years after *any* entry" (emphasis added), contending that this addition of "any" indicates that "after entry" normally refers only to the last entry. This is not a permissible inference in the face of the explicit definition of entry in Section 101 (a) (13). Moreover, it seems clear that the primary purpose of the language in Section 241 (a) (13) was to reach those who had aided illegal entrants before they—the aiders—had even come to the United States, and to make certain that the statute covered such aiders no matter the time when they may have carried out their activities—

whether before, after, or at the time of any entry of theirs. See Immigration Service Analyses of S. 3455, p. 241–11–12 and of S. 716, p. 241–8. Under the present statute, as under the prior one, "entry" means "any entry", initial, intermediate or final.

Other courts which have had the issue before them have agreed with the decision below and have ruled that proscribed activities taking place after an initial entry render an alien deportable for conduct "after entry", even though such activities may antedate a subsequent entry. In *United States ex rel. Belfrage* v. *Kenton,* 224 F. 2d 803, the Second Circuit, dealing with a situation similar to that here involved stated (224 F. 2d at 805):

> * * * we think the plain language of the pertinent statute [1952], read as it should be in the light of the definition of "entry" in Section 101 (a) (13) of the same Act, * * * leaves no fair room for doubt that Congress did intend to make membership of an alien in the Communist Party of the United States after any "entry" a lawful ground for an order of deportation. * * *

In *Fougherouse* v. *Brownell,* D. Ore., No. 7331, January 10, 1958, the alien, following an initial entry in 1924 without a visa, became a member of the Communist Party in the years 1936–1938. He thereafter departed and reentered with a visa in 1940. On these facts, the district court found "that either entry is a sufficient foundation upon which to lay a charge of Communist membership after entry", under the 1950 Act. Cf. *United States ex rel. Allessio* v. *Day,*

42 F. 2d 217 (C. A. 2) (deportation for conviction, after entry, of two crimes involving moral turpitude, where second conviction postdated a departure and reentry).

B. THE ESSENTIAL PURPOSE OF SECTION 22 OF THE INTERNAL SECURITY ACT OF 1950 WAS TO EXPEL ALIENS WHO, LIKE PETITIONER, HAVE BEEN MEMBERS OF THE COMMUNIST PARTY WHILE RESIDENTS OF THIS COUNTRY

The construction of the statute as applying to any entry, including the first as well as the last, carries out the Congressional purpose as it is unmistakably revealed in the legislative history of the 1940 and 1950 Acts.

Section 23 (a) of the Alien Registration Act of 1940 was adopted to overcome the decision of this Court in *Kessler* v. *Strecker*, 307 U. S. 22, which held that past membership of an alien in a proscribed organization was not ground for deportation under the 1918 Act. See S. Rep. No. 1796, 76th Cong., 3d Sess., p. 3, stating that:

> Section 23 amends the act of October 16, 1918, which provides for the exclusion and deportation from the United States of aliens who are members of the anarchistic and similar classes, so as to provide that no alien shall be admitted to the United States who has at any time been a member of such classes, *and to also provide that any alien who has been a member of such classes at any time after his admission to the United States (for no matter how short a time or how far in the past so long as it was after the date of entry), shall be deported.* [Emphasis added.]

This statement of purpose was repeated in the Conference Report, H. Rep. No. 2683, 76th Cong., 3d Sess., p. 9.

As Representative Hobbs, one of the sponsors of the 1940 amendment explained (84 Cong. Rec. 10448–9):

> I shall give the underlying philosophy of this section. It is that in this day and time we have floods of applications from perfectly good aliens who want to come here and make their homes and make the same splendid contribution to our civilization that good aliens have throughout the ages. This country has been builded by good aliens who have come here and have worked wonderfully with the good people of this Nation.
>
> We are all aliens, if you trace the family tree far enough, so we have no prejudice against aliens. With the world to select from, with the cream of the alien world seeking admission, when we are unable to accommodate millions because of our quota limitations, why not select the best? Why insist upon keeping some of the worst? They may have sinned only once, but there are thousands who have never sinned. I prefer those. You may as well say that one slip, one sin, does not militate against chastity. No matter how long since, nor for how short a time, anyone may have knowingly and voluntarily strayed from the straight and narrow path of virtue, he cannot be sinless. Of course there is virtue in sincere repentance. Many really reform. Forgiveness is a divine attribute, which we should practice whenever

> possible. We are perfectly willing to forgive every one of those aliens who brought or bring themselves within the purview of this title. This title inflicts no punishment upon any of them: it says to them, "Go and sin no more".
>
> They came to our home and plotted the destruction of our Government that bade them welcome, but all we do here is to send them—not to prison or gallows—but back to their own home.
>
> Though we deal only in such kindly fashion with them, we feel in duty bound to prefer those who have never been guilty of allowing themselves to be inoculated with the poison virus of those alien isms that seek to destroy our government by violence. That is the issue.

This philosophy was carried one step further by Section 22 of the Internal Security Act, which made proof of membership in the Communist Party, without more, ground for deportation. Section 22 originated in S. 1832, 81st Cong., 2d Sess., which was passed by the Senate on August 9, 1950, without debate (96 Cong. Rec. 12058, 12060). S. Rep. No. 2230, 81st Cong., 2d Sess., pointed out that the basic purpose of the legislation was to "strengthen the provisions of existing law with respect to the exclusion and deportation of subversive aliens" (p. 5), and that "the subversive alien is deportable as a member of a class of excludable subversives at any time after entry, whether or not membership in the class has ceased" (p. 23). After summarizing and quoting from the testimony of former high officials of the Communist Party during the 1949 hearings, the report set forth

the conclusions upon which this legislative determination was based, declaring (p. 16): [11]

> From the statements made before the subcommittee, as well as the general evidence gathered—the history of the Communist movement, the changes of its policies, the manner of its expression, the utterances of the Comintern leadership—*the conclusion is inescapable that the Communist Party and the Communist movement in the United States is an alien movement, sustained, augmented, and controlled by European Communists and the Soviet Union. The severance of this connection and the destruction of the life line of communism becomes, therefore, substantially an immigration problem.* [Emphasis added.]

The bitter debate over the 1950 internal security bill did not relate to Section 22. In fact, the dissenting minority of the Senate Committee on the Judiciary stated: "[W]e do not quarrel with the provision * * * for the exclusion of alien members of the Communist Party of the United States, or with the later provision [Section 22 of the Internal Security Act] for their deportation. It is undisputed that the Communists of the world, including the United States, are the fifth column allies of the Soviet Union." S. Rep. No. 2369, Part 2, 81st Cong., 2d Sess., p. 14.

In sum, Section 23 (a) of the Alien Registration

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[11] S. 1832 was incorporated in the Senate Internal Security Act of 1950 (S. 4037, 81st Cong., 2d Sess.). Section 22 was not contained in the Internal Security bill at it passed the House (see H. Rep. 3112, 81st Cong., 2d Sess., p. 48; 96 Cong. Rec. 15287). It was added by the Senate and included in the conference substitute.

Act of 1940 and Section 22 of the Internal Security Act of 1950 were adopted because Congress was overwhelmingly of the opinion that the greatest strength of the Communist Party in this country lay in its alien membership. Congress concluded that the most effective step would be to expel all aliens who had been knowingly affiliated, at any time, with the Communist movement in this country. The 1940 amendment overcame the *Kessler* case to reach this end, and the 1950 Act established that past membership in the Communist Party, *per se*, brought an alien within the deportable class.

It may be suggested that even if entry may be construed as the first or last coming in those cases where the returning alien seeks readmission, and is readmitted, under his previously established status, it should not be so construed in this case. Here, it may be pointed out, petitioner's reentry in 1938 was not dependent upon his original entry, but was a new entry as a quota immigrant. This, it might be argued, gave him new status unmarred by prior Communist Party affiliation. Such an argument, however, misinterprets the effect of the readmission in 1938 and overlooks the plain purpose of the Internal Security Act of 1950. Even though petitioner's entry in 1938 was under a new quota not connected with his original entry, he was still within the class at whom the 1950 Act was aimed: aliens who, while within the United States, were members of the Communist Party. The 1938 entry did not wipe out the fact of the previous affiliation. When petitioner was admitted in September, 1938, the law then in effect (Anarchist Deporta-

tion Act of 1918, 40 Stat. 1012, as amended) provided only for the exclusion of aliens who, at the time of their entry, were members of organizations advocating the overthrow of the government by force and violence; it did not exclude those who, prior to entry, had terminated their membership in such organizations. Cf. *Kessler* v. *Strecker*, 307 U. S. 22, 29. Hence, past affiliation was not a ground for petitioner's exclusion in 1938.[12] But the 1938 readmission of petitioner was not a commitment, binding upon a later Congress, that his past history could never be the criterion of desirability. If petitioner had not departed from the United States in 1937, he would unquestionably have become subject to deportation as a result of the passage of the 1940 and 1950 Acts. *Galvan* v. *Press*, 347 U. S. 522, 529–532; *Lehmann* v. *Carson*, 353 U. S. 685; *Mulcahey* v. *Catalanotte*, 353 U. S. 692.[13] Surely there is no reason why he should acquire immunity because he *did* leave and then return. The fact remains that he

[12] Moreover, the statutory provision for exclusion and deportation by reason of the single fact of membership in the Communist Party was not enacted until the Internal Security Act of 1950.

[13] The constitutionality of Section 22 was sustained by this Court in *Galvan* v. *Press*, 347 U. S. 522. In *Rowoldt* v. *Perfetto*, 355 U. S. 115, the Court did not impair that holding, but decided only that Rowoldt was not a member of the Communist Party within the contemplation of the statute. The issue of membership is not pressed here, and understandably so in view of the extensive participation and activity of petitioner who was a member for at least four years and a unit leader. The issue of constitutionality was extensively briefed by the Government in its Supplemental Brief on the *Rowoldt* reargument, No. 5, October Term, 1957, pp. 24–77.

is an alien who, while enjoying the benefits of United States residence, joined the Communist Party. He is of the group which Congress considers undesirable. As a member of that group, he was properly ordered deported.[14]

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the Court of Appeals should be affirmed.

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MARCH 1958.

[14] On May 16, 1956, petitioner moved the Board of Immigration Appeals to reopen the deportation proceeding so that he might apply for suspension of deportation. The record, however, was unavailable at that time, being before the Court of Appeals on petitioner's appeal from the order of deportation, and on June 7, 1956 the Board denied the motion on that ground without reaching its merits (Appendix, *infra*, p. 24). This action does not preclude petitioner from seeking the discretionary relief of suspension of deportation under Section 244 (a) (5) of the Immigration and Nationality Act of 1952, 66 Stat. 215, if this Court rules, as we contend, that petitioner is deportable under Section 22 of the Internal Security Act of 1950.

APPENDIX

UNITED STATES DEPARTMENT OF JUSTICE

BOARD OF IMMIGRATION APPEALS

JUNE 7, 1956.

File: A-12731O6—Los Angeles

IN THE MATTER OF FRANCESCO GUISEPPE BONETTI

In deportation proceedings

In behalf of respondent: Aubrey I. Finn, Esquire, 6331 Hollywood Boulevard, Hollywood 28, California.

This case comes forward pursuant to counsel's motion dated May 16, 1956 requesting reopening of the proceedings for the purpose of affording the respondent an opportunity to apply for the discretionary relief of suspension of deportation. Attached to counsel's motion is a self-explanatory affidavit subscribed and sworn to by the respondent on May 16, 1956. This Board is unable to consider this motion on its merits, inasmuch as the record is not available. It appears that the record relating to the respondent is presently before the United States Court of Appeals for the District of Columbia.

The motion and oral argument on the same will be denied, inasmuch as the record is not available. Moreover, the case is presently pending in the United States Court of Appeals for the District of Columbia. Accordingly, the following order will be entered.

ORDER: It is ordered that the motion and oral argument on the same be denied.